

AMENDED IN SENATE MAY 11, 2004

AMENDED IN SENATE MAY 4, 2004

**SENATE BILL**

**No. 1794**

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**Introduced by Senator Perata**

February 20, 2004

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An act to amend Sections 1369, 1370, and 1370.01 of the Penal Code, relating to competency.

LEGISLATIVE COUNSEL'S DIGEST

SB 1794, as amended, Perata. Criminal procedure: competency.

Existing law provides that antipsychotic medications can be administered to patients in various circumstances, including against a person's will or when a person is incapable of making rational decisions regarding that medication under certain circumstances, if proper procedures are followed. Separately, existing law authorizes distinct procedures for misdemeanor cases and those that include a felony charge for determining a defendant's mental competence to stand trial if a doubt arises about the mental competence of the defendant, as specified. Under both of these procedures, at least 2 psychologists, psychiatrists, or a combination of both are required to examine the person whose competence is questioned.

This bill would require these appointed mental health professionals to report to the court on various specified issues relating to the person's competence, and to report specified information regarding the potential for antipsychotic medication for the defendant.

Under existing law, if a defendant is found mentally incompetent because of a mental disorder, the criminal trial or judgment is suspended until the person becomes mentally competent. Existing law requires the

court, in the meantime, to order that the defendant be delivered to a state hospital for the care and treatment of the mentally disordered, or to any other available public or private treatment facility approved by the community program director, or be placed on outpatient status, as specified. The procedures specified in existing law for the referral of a person for treatment to recover competence do not require a court to hear and determine whether antipsychotic medication should be administered to the defendant, as specified.

This bill would require that, prior to making an order committing the defendant for this treatment in either a misdemeanor or felony case, a court would have to hear and determine whether antipsychotic medication should be administered to the defendant, and would specify procedures relating to determining the appropriateness of administering antipsychotic medications during treatment.

By adding to the duties of county treatment facilities regarding their administration of antipsychotic medications to persons during commitments under these provisions, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1369 of the Penal Code is amended to  
2 read:

3 1369. A trial by court or jury of the question of mental  
4 competence shall proceed in the following order:

5 (a) The court shall appoint a psychiatrist or licensed  
6 psychologist, and any other expert the court may deem



1 appropriate, to examine the defendant. In any case where the  
2 defendant or the defendant's counsel informs the court that the  
3 defendant is not seeking a finding of mental incompetence, the  
4 court shall appoint two psychiatrists, licensed psychologists, or a  
5 combination thereof. One of the psychiatrists or licensed  
6 psychologists may be named by the defense and one may be named  
7 by the prosecution. The examining psychiatrists or licensed  
8 psychologists shall report to the court their opinions of the nature  
9 of the defendant's mental disorder, if any, the defendant's ability  
10 or inability to understand the nature of the criminal proceedings or  
11 assist counsel in the conduct of a defense in a rational manner as  
12 a result of a mental disorder and, if within the scope of their  
13 licenses and appropriate to their opinions, whether or not treatment  
14 with antipsychotic medication is medically appropriate for the  
15 defendant and whether antipsychotic medication is likely to  
16 restore the defendant to mental competence. If an examining  
17 psychologist is of the opinion that antipsychotic medication may  
18 be medically appropriate for the defendant and that the defendant  
19 should be evaluated by a psychiatrist to determine if antipsychotic  
20 medication is medically appropriate, the report of the psychologist  
21 shall include this opinion and a recommendation to the court that  
22 a psychiatrist examine the defendant. The reports of the examining  
23 psychiatrists or licensed psychologists shall also address the issues  
24 of whether the defendant has capacity to make decisions regarding  
25 antipsychotic medication and whether the defendant is a danger to  
26 self or others. If the defendant is examined by a psychiatrist and  
27 the psychiatrist states an opinion as to whether or not treatment  
28 with antipsychotic medication is medically appropriate, the report  
29 shall include opinions as to the likely or potential side effects of the  
30 medication, the expected efficacy of the medication, and possible  
31 alternative treatments. If it is suspected the defendant is  
32 developmentally disabled, the court shall appoint the director of  
33 the regional center for the developmentally disabled established  
34 under Division 4.5 (commencing with Section 4500) of the  
35 Welfare and Institutions Code, or the designee of the director, to  
36 examine the defendant. The court may order the developmentally  
37 disabled defendant to be confined for examination in a residential  
38 facility or state hospital.

39 The regional center director shall recommend to the court a  
40 suitable residential facility or state hospital. Prior to issuing an

1 order pursuant to this section, the court shall consider the  
2 recommendation of the regional center director. While the person  
3 is confined pursuant to order of the court under this section, he or  
4 she shall be provided with necessary care and treatment.

5 (b) (1) The counsel for the defendant shall offer evidence in  
6 support of the allegation of mental incompetence.

7 (2) If the defense declines to offer any evidence in support of  
8 the allegation of mental incompetence, the prosecution may do so.

9 (c) The prosecution shall present its case regarding the issue of  
10 the defendant's present mental competence.

11 (d) Each party may offer rebutting testimony, unless the court,  
12 for good reason in furtherance of justice, also permits other  
13 evidence in support of the original contention.

14 (e) When the evidence is concluded, unless the case is  
15 submitted without final argument, the prosecution shall make its  
16 final argument and the defense shall conclude with its final  
17 argument to the court or jury.

18 (f) In a jury trial, the court shall charge the jury, instructing  
19 them on all matters of law necessary for the rendering of a verdict.  
20 It shall be presumed that the defendant is mentally competent  
21 unless it is proved by a preponderance of the evidence that the  
22 defendant is mentally incompetent. The verdict of the jury shall be  
23 unanimous.

24 SEC. 2. Section 1370 of the Penal Code is amended to read:

25 1370. (a) (1) (A) If the defendant is found mentally  
26 competent, the criminal process shall resume, the trial on the  
27 offense charged shall proceed, and judgment may be pronounced.

28 (B) If the defendant is found mentally incompetent, the trial or  
29 judgment shall be suspended until the person becomes mentally  
30 competent.

31 (i) In the meantime, the court shall order that the mentally  
32 incompetent defendant be delivered by the sheriff to a state  
33 hospital for the care and treatment of the mentally disordered, or  
34 to any other available public or private treatment facility approved  
35 by the community program director that will promote the  
36 defendant's speedy restoration to mental competence, or placed on  
37 outpatient status as specified in Section 1600.

38 (ii) However, if the action against the defendant who has been  
39 found mentally incompetent is on a complaint charging a felony  
40 offense specified in Section 290, the prosecutor shall determine

whether the defendant previously has been found mentally incompetent to stand trial pursuant to this chapter on a charge of a Section 290 offense, or whether the defendant is currently the subject of a pending Section 1368 proceeding arising out of a charge of a Section 290 offense. If either determination is made, the prosecutor shall so notify the court and defendant in writing. After this notification, and opportunity for hearing, the court shall order that the defendant be delivered by the sheriff to a state hospital or other secure treatment facility for the care and treatment of the mentally disordered unless the court makes specific findings on the record that an alternative placement would provide more appropriate treatment for the defendant and would not pose a danger to the health and safety of others.

(iii) If the action against the defendant who has been found mentally incompetent is on a complaint charging a felony offense specified in Section 290 and the defendant has been denied bail pursuant to subdivision (b) of Section 12 of Article I of the California Constitution because the court has found, based upon clear and convincing evidence, a substantial likelihood that the person's release would result in great bodily harm to others, the court shall order that the defendant be delivered by the sheriff to a state hospital for the care and treatment of the mentally disordered unless the court makes specific findings on the record that an alternative placement would provide more appropriate treatment for the defendant and would not pose a danger to the health and safety of others.

(iv) The clerk of the court shall notify the Department of Justice in writing of any finding of mental incompetence with respect to a defendant who is subject to clause (ii) or (iii) for inclusion in his or her state summary criminal history information.

(C) Upon the filing of a certificate of restoration to competence, the court shall order that the defendant be returned to court in accordance with Section 1372. The court shall transmit a copy of its order to the community program director or a designee.

(D) A defendant charged with a violent felony may not be delivered to a state hospital or treatment facility pursuant to this subdivision unless the state hospital or treatment facility has a secured perimeter or a locked and controlled treatment facility, and the judge determines that the public safety will be protected.

1 (E) For purposes of this paragraph, “violent felony” means an  
2 offense specified in subdivision (c) of Section 667.5.

3 (F) A defendant charged with a violent felony may be placed  
4 on outpatient status, as specified in Section 1600, only if the court  
5 finds that the placement will not pose a danger to the health or  
6 safety of others.

7 (2) Prior to making the order directing that the defendant be  
8 confined in a state hospital or other treatment facility or placed on  
9 outpatient status, the court shall proceed as follows:

10 (A) The court shall order the community program director or  
11 a designee to evaluate the defendant and to submit to the court  
12 within 15 judicial days of the order a written recommendation as  
13 to whether the defendant should be required to undergo outpatient  
14 treatment, or committed to a state hospital or to any other treatment  
15 facility. No person shall be admitted to a state hospital or other  
16 treatment facility or placed on outpatient status under this section  
17 without having been evaluated by the community program  
18 director or a designee.

19 (B) The court shall hear and determine whether medication  
20 shall be administered to the defendant for the purpose of restoring  
21 him or her to mental competence as follows:

22 (i) If the defendant, with advice of his or her counsel, consents,  
23 the court order of commitment shall include confirmation that  
24 antipsychotic medication may be given to the defendant as  
25 prescribed by a treating psychiatrist pursuant to the defendant’s  
26 consent. The commitment order shall also indicate that, if the  
27 defendant withdraws consent for antipsychotic medication, after  
28 the treating psychiatrist complies with the provisions of  
29 subparagraph (C), the defendant shall be returned to court for a  
30 hearing in accordance with this subdivision regarding whether  
31 antipsychotic medication shall be administered involuntarily.

32 (ii) If the defendant does not consent to the administration of  
33 medication, the court may order the involuntary administration of  
34 medication determined to be medically appropriate by a treating  
35 hospital, facility, or program described in subdivision (a) if it finds  
36 any of the following to be true:

37 (I) The defendant lacks capacity to refuse medication, if the  
38 court, in making the determination whether or not to order  
39 involuntary administration of antipsychotic medication, is guided

1 by and complies with applicable provisions of the United States  
2 and California Constitutions and controlling decisional law.

3 (II) The defendant is a danger to others within the meaning of  
4 Section 5300 of the Welfare and Institutions Code, or is a danger  
5 to himself or herself within the meaning of Section 5260 of the  
6 Welfare and Institutions Code.

7 (III) The people have charged the defendant with a serious  
8 crime against the person or property; involuntary administration  
9 of antipsychotic medication is substantially likely to render the  
10 defendant competent to stand trial; the medication is unlikely to  
11 have side effects that interfere with the defendant's ability to  
12 understand the nature of the criminal proceedings or to assist  
13 counsel in the conduct of a defense in a reasonable manner; less  
14 intrusive treatments are unlikely to have substantially the same  
15 results; and antipsychotic medication is in the patient's best  
16 medical interest in light of his or her medical condition.

17 (iii) *The court shall not order involuntary administration of*  
18 *psychotropic medication under subclause (III) of clause (ii) unless*  
19 *the court has first found that the defendant does not meet the*  
20 *criteria for involuntary administration of psychotropic medication*  
21 *under either subclause (I) or (II) of clause (ii).*

22 (iv) In all cases, the treating hospital, facility or program may  
23 administer medically appropriate antipsychotic medication  
24 prescribed by a psychiatrist in an emergency as described in  
25 subdivision (m) of Section 5008 of the Welfare and Institutions  
26 Code.

27 ~~(iv)~~

28 (v) Any report made pursuant to paragraph (1) of subdivision  
29 (b) shall include a description of any antipsychotic medication  
30 administered to the defendant and its effects and side effects,  
31 including effects on the defendant's appearance or behavior that  
32 would affect the defendant's ability to understand the nature of the  
33 criminal proceedings or to assist counsel in the conduct of a  
34 defense in a reasonable manner. During the time the defendant is  
35 confined in a state hospital or other treatment facility or placed on  
36 outpatient status, either the defendant or the people may request  
37 that the court review any order made pursuant to this subdivision.  
38 The defendant, to the same extent enjoyed by other patients in the  
39 state hospital or other treatment facility, shall have the right to



1 contact the Patients' Rights Advocate regarding his or her rights  
2 under this section.

3 (C) If the defendant consented to antipsychotic medication as  
4 described in clause (i) of subparagraph (B), but subsequently  
5 withdraws his or her consent, or, if involuntary antipsychotic  
6 medication was not ordered pursuant to clause (ii) of subparagraph  
7 (B), and the treating psychiatrist determines that antipsychotic  
8 medication has become medically necessary and appropriate, the  
9 treating psychiatrist shall make efforts to obtain informed consent  
10 from the defendant for antipsychotic medication. If informed  
11 consent is not obtained from the defendant, and the treating  
12 psychiatrist is of the opinion that the defendant lacks capacity to  
13 make decisions regarding antipsychotic medication or that the  
14 defendant is a danger to others within the meaning of Section 5300  
15 of the Welfare and Institutions Code, or is a danger to himself or  
16 herself within the meaning of Section 5260 of the Welfare and  
17 Institutions Code, a report shall be sent to the committing court  
18 that includes an assessment of the current mental status of the  
19 defendant and the opinion of the treating psychiatrist that  
20 involuntary antipsychotic medication has become medically  
21 necessary and appropriate. The court shall provide copies of the  
22 report to the prosecuting attorney and to the attorney representing  
23 the defendant and shall set a hearing to determine whether  
24 involuntary antipsychotic medication should be ordered in the  
25 manner described in subparagraph (B).

26 (3) When the court orders that the defendant be confined in a  
27 state hospital or other public or private treatment facility, the court  
28 shall provide copies of the following documents which shall be  
29 taken with the defendant to the state hospital or other treatment  
30 facility where the defendant is to be confined:

31 (A) The commitment order, including a specification of the  
32 charges.

33 (B) A computation or statement setting forth the maximum  
34 term of commitment in accordance with subdivision (c).

35 (C) A computation or statement setting forth the amount of  
36 credit for time served, if any, to be deducted from the maximum  
37 term of commitment.

38 (D) State summary criminal history information.

39 (E) Any arrest reports prepared by the police department or  
40 other law enforcement agency.



1 (F) Any court-ordered psychiatric examination or evaluation  
2 reports.

3 (G) The community program director's placement  
4 recommendation report.

5 (H) Records of any finding of mental incompetence pursuant  
6 to this chapter arising out of a complaint charging a felony offense  
7 specified in Section 290 or any pending Section 1368 proceeding  
8 arising out of a charge of a Section 290 offense.

9 (4) When the defendant is committed to a treatment facility  
10 pursuant to clause (i) of subparagraph (B) of paragraph (1) or the  
11 court makes the findings specified in clause (ii) or (iii) of  
12 subparagraph (B) of paragraph (1) to assign the defendant to a  
13 treatment facility other than a state hospital or other secure  
14 treatment facility, the court shall order that notice be given to the  
15 appropriate law enforcement agency or agencies having local  
16 jurisdiction at the site of the placement facility of any finding of  
17 mental incompetence pursuant to this chapter arising out of a  
18 charge of a Section 290 offense.

19 (5) When directing that the defendant be confined in a state  
20 hospital pursuant to this subdivision, the court shall select the  
21 hospital in accordance with the policies established by the State  
22 Department of Mental Health.

23 (6) (A) If the defendant is committed or transferred to a state  
24 hospital pursuant to this section, the court may, upon receiving the  
25 written recommendation of the medical director of the state  
26 hospital and the community program director that the defendant be  
27 transferred to a public or private treatment facility approved by the  
28 community program director, order the defendant transferred to  
29 that facility. If the defendant is committed or transferred to a public  
30 or private treatment facility approved by the community program  
31 director, the court may, upon receiving the written  
32 recommendation of the community program director, transfer the  
33 defendant to a state hospital or to another public or private  
34 treatment facility approved by the community program director.  
35 In the event of dismissal of the criminal charges before the  
36 defendant recovers competence, the person shall be subject to the  
37 applicable provisions of the Lanterman-Petris-Short Act (Part 1  
38 commencing with Section 5000) of Division 5 of the Welfare and  
39 Institutions Code). Where either the defendant or the prosecutor  
40 chooses to contest either kind of order of transfer, a petition may

1 be filed in the court for a hearing, which shall be held if the court  
2 determines that sufficient grounds exist. At the hearing, the  
3 prosecuting attorney or the defendant may present evidence  
4 bearing on the order of transfer. The court shall use the same  
5 standards as are used in conducting probation revocation hearings  
6 pursuant to Section 1203.2.

7 Prior to making an order for transfer under this section, the court  
8 shall notify the defendant, the attorney of record for the defendant,  
9 the prosecuting attorney, and the community program director or  
10 a designee.

11 (B) If the defendant is initially committed to a state hospital or  
12 secure treatment facility pursuant to clause (ii) or (iii) of  
13 subparagraph (B) of paragraph (1) and is subsequently transferred  
14 to any other facility, copies of the documents specified in  
15 paragraph (3) shall be taken with the defendant to each subsequent  
16 facility to which the defendant is transferred. The transferring  
17 facility shall also notify the appropriate law enforcement agency  
18 or agencies having local jurisdiction at the site of the new facility  
19 that the defendant is a person subject to clause (ii) or (iii) of  
20 subparagraph (B) of paragraph (1).

21 (b) (1) Within 90 days of a commitment made pursuant to  
22 subdivision (a), the medical director of the state hospital or other  
23 treatment facility to which the defendant is confined shall make a  
24 written report to the court and the community program director for  
25 the county or region of commitment, or a designee, concerning the  
26 defendant's progress toward recovery of mental competence.  
27 Where the defendant is on outpatient status, the outpatient  
28 treatment staff shall make a written report to the community  
29 program director concerning the defendant's progress toward  
30 recovery of mental competence. Within 90 days of placement on  
31 outpatient status, the community program director shall report to  
32 the court on this matter. If the defendant has not recovered mental  
33 competence, but the report discloses a substantial likelihood that  
34 the defendant will regain mental competence in the foreseeable  
35 future, the defendant shall remain in the state hospital or other  
36 treatment facility or on outpatient status. Thereafter, at six-month  
37 intervals or until the defendant becomes mentally competent,  
38 where the defendant is confined in a treatment facility, the medical  
39 director of the hospital or person in charge of the facility shall  
40 report in writing to the court and the community program director

1 or a designee regarding the defendant's progress toward recovery  
2 of mental competence. Where the defendant is on outpatient status,  
3 after the initial 90-day report, the outpatient treatment staff shall  
4 report to the community program director on the defendant's  
5 progress toward recovery, and the community program director  
6 shall report to the court on this matter at six-month intervals. A  
7 copy of these reports shall be provided to the prosecutor and  
8 defense counsel by the court. If the report indicates that there is no  
9 substantial likelihood that the defendant will regain mental  
10 competence in the foreseeable future, the committing court shall  
11 order the defendant to be returned to the court for proceedings  
12 pursuant to paragraph (2) of subdivision (c). The court shall  
13 transmit a copy of its order to the community program director or  
14 a designee.

15 (2) Any defendant who has been committed or has been on  
16 outpatient status for 18 months and is still hospitalized or on  
17 outpatient status shall be returned to the committing court where  
18 a hearing shall be held pursuant to the procedures set forth in  
19 Section 1369. The court shall transmit a copy of its order to the  
20 community program director or a designee.

21 (3) If it is determined by the court that no treatment for the  
22 defendant's mental impairment is being conducted, the defendant  
23 shall be returned to the committing court. The court shall transmit  
24 a copy of its order to the community program director or a  
25 designee.

26 (4) At each review by the court specified in this subdivision, the  
27 court shall determine if the security level of housing and treatment  
28 is appropriate and may make an order in accordance with its  
29 determination.

30 (c) (1) At the end of three years from the date of commitment  
31 or a period of commitment equal to the maximum term of  
32 imprisonment provided by law for the most serious offense  
33 charged in the information, indictment, or misdemeanor  
34 complaint, whichever is shorter, a defendant who has not  
35 recovered mental competence shall be returned to the committing  
36 court. The court shall notify the community program director or  
37 a designee of the return and of any resulting court orders.

38 (2) Whenever any defendant is returned to the court pursuant  
39 to paragraph (1) or (2) of subdivision (b) or paragraph (1) of this  
40 subdivision and it appears to the court that the defendant is gravely

1 disabled, as defined in subparagraph (B) of paragraph (1) of  
2 subdivision (h) of Section 5008 of the Welfare and Institutions  
3 Code, the court shall order the conservatorship investigator of the  
4 county of commitment of the defendant to initiate conservatorship  
5 proceedings for the defendant pursuant to Chapter 3 (commencing  
6 with Section 5350) of Part 1 of Division 5 of the Welfare and  
7 Institutions Code. Any hearings required in the conservatorship  
8 proceedings shall be held in the superior court in the county that  
9 ordered the commitment. The court shall transmit a copy of the  
10 order directing initiation of conservatorship proceedings to the  
11 community program director or a designee and shall notify the  
12 community program director or a designee of the outcome of the  
13 proceedings.

14 (3) Where the defendant is confined in a treatment facility, a  
15 copy of any report to the committing court regarding the  
16 defendant's progress toward recovery of mental competence shall  
17 be provided by the committing court to the prosecutor and to the  
18 defense counsel.

19 (d) The criminal action remains subject to dismissal pursuant  
20 to Section 1385. If the criminal action is dismissed, the court shall  
21 transmit a copy of the order of dismissal to the community  
22 program director or a designee.

23 (e) If the criminal charge against the defendant is dismissed, the  
24 defendant shall be released from any commitment ordered under  
25 this section, but without prejudice to the initiation of any  
26 proceedings that may be appropriate under the  
27 Lanterman-Petris-Short Act, Part 1 (commencing with Section  
28 5000) of Division 5 of the Welfare and Institutions Code.

29 (f) As used in this chapter, "community program director"  
30 means the person, agency, or entity designated by the State  
31 Department of Mental Health pursuant to Section 1605 of this code  
32 and Section 4360 of the Welfare and Institutions Code.

33 (g) For the purpose of this section, "secure treatment facility"  
34 shall not include, except for state mental hospitals, state  
35 developmental centers, and correctional treatment facilities, any  
36 facility licensed pursuant to Chapter 2 (commencing with Section  
37 1250) of, Chapter 3 (commencing with Section 1500) of, or  
38 Chapter 3.2 (commencing with Section 1569) of, Division 2 of the  
39 Health and Safety Code, or any community board and care facility.



SEC. 3. Section 1370.01 of the Penal Code is amended to read:

1370.01. (a) (1) If the defendant is found mentally competent, the criminal process shall resume, the trial on the offense charged shall proceed, and judgment may be pronounced. If the defendant is found mentally incompetent, the trial or judgment shall be suspended until the person becomes mentally competent, and the court shall order that (A) in the meantime, the defendant be delivered by the sheriff to an available public or private treatment facility approved by the county mental health director that will promote the defendant's speedy restoration to mental competence, or placed on outpatient status as specified in this section, and (B) upon the filing of a certificate of restoration to competence, the defendant be returned to court in accordance with Section 1372. The court shall transmit a copy of its order to the county mental health director or his or her designee.

(2) Prior to making the order directing that the defendant be confined in a treatment facility or placed on outpatient status, the court shall proceed as follows:

(A) The court shall order the county mental health director or his or her designee to evaluate the defendant and to submit to the court within 15 judicial days of the order a written recommendation as to whether the defendant should be required to undergo outpatient treatment, or committed to a treatment facility. No person shall be admitted to a treatment facility or placed on outpatient status under this section without having been evaluated by the county mental health director or his or her designee. No person shall be admitted to a state hospital under this section unless the county mental health director finds that there is no less restrictive appropriate placement available and the county mental health director has a contract with the State Department of Mental Health for these placements.

(B) The court shall hear and determine whether medication shall be administered to the defendant for the purpose of restoring him or her to mental competence as follows:

(i) If the defendant, with advice of his or her counsel, consents, the court order of commitment shall include confirmation that antipsychotic medication may be given to the defendant as prescribed by a treating psychiatrist pursuant to the defendant's consent. The commitment order shall also indicate that, if the

1 defendant withdraws consent for antipsychotic medication, after  
2 the treating psychiatrist complies with the provisions of  
3 subparagraph (C), the defendant shall be returned to court for a  
4 hearing in accordance with this subdivision regarding whether  
5 antipsychotic medication shall be administered involuntarily.

6 (ii) If the defendant does not consent to the administration of  
7 medication, the court may order the involuntary administration of  
8 medication determined to be medically appropriate by a treating  
9 hospital, facility, or program described in subdivision (a) if it finds  
10 any of the following to be true:

11 (I) The defendant lacks capacity to refuse medication, if the  
12 court, in making the determination whether or not to order  
13 involuntary administration of antipsychotic medication, is guided  
14 by and complies with applicable provisions of the United States  
15 and California Constitutions and controlling decisional law.

16 (II) The defendant is a danger to others within the meaning of  
17 Section 5300 of the Welfare and Institutions Code, or is a danger  
18 to himself or herself within the meaning of Section 5260 of the  
19 Welfare and Institutions Code.

20 (III) The people have charged the defendant with a serious  
21 crime against the person or property; involuntary administration  
22 of antipsychotic medication is substantially likely to render the  
23 defendant competent to stand trial; the medication is unlikely to  
24 have side effects that interfere with the defendant's ability to  
25 understand the nature of the criminal proceedings or to assist  
26 counsel in the conduct of a defense in a reasonable manner; less  
27 intrusive treatments are unlikely to have substantially the same  
28 results; and antipsychotic medication is in the patient's best  
29 medical interest in light of his or her medical condition.

30 (iii) *The court shall not order involuntary administration of*  
31 *psychotropic medication under subclause (III) of clause (ii) unless*  
32 *the court has first found that the defendant does not meet the*  
33 *criteria for involuntary administration of psychotropic medication*  
34 *under either subclause (I) or (II) of clause (ii).*

35 (iv) In all cases, the treating hospital, facility, or program may  
36 administer medically appropriate antipsychotic medication  
37 prescribed by a psychiatrist in an emergency as described in  
38 subdivision (m) of Section 5008 of the Welfare and Institutions  
39 Code.

40 ~~(iv)~~



(v) Any report made pursuant to subdivision (b) shall include a description of any antipsychotic medication administered to the defendant and its effects and side effects, including effects on the defendant's appearance or behavior that would affect the defendant's ability to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a reasonable manner. During the time the defendant is confined in a state hospital or other treatment facility or placed on outpatient status, either the defendant or the people may request that the court review any order made pursuant to this subdivision. The defendant, to the same extent enjoyed by other patients in the state hospital or other treatment facility, shall have the right to contact the Patients' Rights Advocate regarding his or her rights under this section.

(C) If the defendant consented to antipsychotic medication as described in clause (i) of subparagraph (B), but subsequently withdraws his or her consent, or, if involuntary antipsychotic medication was not ordered pursuant to clause (ii) of subparagraph (B), and the treating psychiatrist determines that antipsychotic medication has become medically necessary and appropriate, the treating psychiatrist shall make efforts to obtain informed consent from the defendant for antipsychotic medication. If informed consent is not obtained from the defendant, and the treating psychiatrist is of the opinion that the defendant lacks capacity to make decisions regarding antipsychotic medication or that the defendant is a danger to others within the meaning of Section 5300 of the Welfare and Institutions Code, or is a danger to himself or herself within the meaning of Section 5260 of the Welfare and Institutions Code, a report shall be sent to the committing court that includes an assessment of the current mental status of the defendant and the opinion of the treating psychiatrist that involuntary antipsychotic medication has become medically necessary and appropriate. The court shall provide copies of the report to the prosecuting attorney and to the attorney representing the defendant and shall set a hearing to determine whether involuntary antipsychotic medication should be ordered in the manner described in subparagraph (B).

(3) When the court, after considering the placement recommendation of the county mental health director required in paragraph (2), orders that the defendant be confined in a public or





1 private treatment facility, the court shall provide copies of the  
2 following documents which shall be taken with the defendant to  
3 the treatment facility where the defendant is to be confined:

4 (A) The commitment order, including a specification of the  
5 charges.

6 (B) A computation or statement setting forth the maximum  
7 term of commitment in accordance with subdivision (c).

8 (C) A computation or statement setting forth the amount of  
9 credit for time served, if any, to be deducted from the maximum  
10 term of commitment.

11 (D) State summary criminal history information.

12 (E) Any arrest reports prepared by the police department or  
13 other law enforcement agency.

14 (F) Any court-ordered psychiatric examination or evaluation  
15 reports.

16 (G) The county mental health director's placement  
17 recommendation report.

18 (4) A person subject to commitment under this section may be  
19 placed on outpatient status under the supervision of the county  
20 mental health director or his or her designee by order of the court  
21 in accordance with the procedures contained in Title 15  
22 (commencing with Section 1600) except that where the term  
23 "community program director" appears the term "county mental  
24 health director" shall be substituted.

25 (5) If the defendant is committed or transferred to a public or  
26 private treatment facility approved by the county mental health  
27 director, the court may, upon receiving the written  
28 recommendation of the county mental health director, transfer the  
29 defendant to another public or private treatment facility approved  
30 by the county mental health director. In the event of dismissal of  
31 the criminal charges before the defendant recovers competence,  
32 the person shall be subject to the applicable provisions of Part 1  
33 (commencing with Section 5000) of Division 5 of the Welfare and  
34 Institutions Code. Where either the defendant or the prosecutor  
35 chooses to contest the order of transfer, a petition may be filed in  
36 the court for a hearing, which shall be held if the court determines  
37 that sufficient grounds exist. At the hearing, the prosecuting  
38 attorney or the defendant may present evidence bearing on the  
39 order of transfer. The court shall use the same standards as are used

1 in conducting probation revocation hearings pursuant to Section  
2 1203.2.

3 Prior to making an order for transfer under this section, the court  
4 shall notify the defendant, the attorney of record for the defendant,  
5 the prosecuting attorney, and the county mental health director or  
6 his or her designee.

7 (b) Within 90 days of a commitment made pursuant to  
8 subdivision (a), the medical director of the treatment facility to  
9 which the defendant is confined shall make a written report to the  
10 court and the county mental health director or his or her designee,  
11 concerning the defendant's progress toward recovery of mental  
12 competence. Where the defendant is on outpatient status, the  
13 outpatient treatment staff shall make a written report to the county  
14 mental health director concerning the defendant's progress toward  
15 recovery of mental competence. Within 90 days of placement on  
16 outpatient status, the county mental health director shall report to  
17 the court on this matter. If the defendant has not recovered mental  
18 competence, but the report discloses a substantial likelihood that  
19 the defendant will regain mental competence in the foreseeable  
20 future, the defendant shall remain in the treatment facility or on  
21 outpatient status. Thereafter, at six-month intervals or until the  
22 defendant becomes mentally competent, where the defendant is  
23 confined in a treatment facility, the medical director of the hospital  
24 or person in charge of the facility shall report in writing to the court  
25 and the county mental health director or a designee regarding the  
26 defendant's progress toward recovery of mental competence.  
27 Where the defendant is on outpatient status, after the initial 90-day  
28 report, the outpatient treatment staff shall report to the county  
29 mental health director on the defendant's progress toward  
30 recovery, and the county mental health director shall report to the  
31 court on this matter at six-month intervals. A copy of these reports  
32 shall be provided to the prosecutor and defense counsel by the  
33 court. If the report indicates that there is no substantial likelihood  
34 that the defendant will regain mental competence in the  
35 foreseeable future, the committing court shall order the defendant  
36 to be returned to the court for proceedings pursuant to paragraph  
37 (2) of subdivision (c). The court shall transmit a copy of its order  
38 to the county mental health director or his or her designee.

39 (c) (1) If, at the end of one year from the date of commitment  
40 or a period of commitment equal to the maximum term of

1 imprisonment provided by law for the most serious offense  
2 charged in the misdemeanor complaint, whichever is shorter, the  
3 defendant has not recovered mental competence, the defendant  
4 shall be returned to the committing court. The court shall notify the  
5 county mental health director or his or her designee of the return  
6 and of any resulting court orders.

7 (2) Whenever any defendant is returned to the court pursuant  
8 to subdivision (b) or paragraph (1) of this subdivision and it  
9 appears to the court that the defendant is gravely disabled, as  
10 defined in subparagraph (A) of paragraph (1) of subdivision (h) of  
11 Section 5008 of the Welfare and Institutions Code, the court shall  
12 order the conservatorship investigator of the county of  
13 commitment of the defendant to initiate conservatorship  
14 proceedings for the defendant pursuant to Chapter 3 (commencing  
15 with Section 5350) of Part 1 of Division 5 of the Welfare and  
16 Institutions Code. Any hearings required in the conservatorship  
17 proceedings shall be held in the superior court in the county that  
18 ordered the commitment. The court shall transmit a copy of the  
19 order directing initiation of conservatorship proceedings to the  
20 county mental health director or his or her designee and shall  
21 notify the county mental health director or his or her designee of  
22 the outcome of the proceedings.

23 (d) The criminal action remains subject to dismissal pursuant  
24 to Section 1385. If the criminal action is dismissed, the court shall  
25 transmit a copy of the order of dismissal to the county mental  
26 health director or his or her designee.

27 (e) If the criminal charge against the defendant is dismissed, the  
28 defendant shall be released from any commitment ordered under  
29 this section, but without prejudice to the initiation of any  
30 proceedings which may be appropriate under Part 1 (commencing  
31 with Section 5000) of Division 5 of the Welfare and Institutions  
32 Code.

33 SEC. 4. Notwithstanding Section 17610 of the Government  
34 Code, if the Commission on State Mandates determines that this  
35 act contains costs mandated by the state, reimbursement to local  
36 agencies and school districts for those costs shall be made pursuant  
37 to Part 7 (commencing with Section 17500) of Division 4 of Title  
38 2 of the Government Code. If the statewide cost of the claim for  
39 reimbursement does not exceed one million dollars (\$1,000,000),

- 1 reimbursement shall be made from the State Mandates Claims
- 2 Fund.

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